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NO. 85-115

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NATIONAL FREIGHT, INC., a New Jersey corporation; DART TRANSIT COMPANY, a Minnesota corporation; OWENS-ILLINOIS, an Ohio corporation; and CONTINENTAL CAN COMPANY, INC., a Delaware corporation,
Petitioners,

vs.

THOMAS D. LARSON, Secretary of Transportation; COL. DANIEL F. DUNN, Commissioner of State Police; LeROY S. ZIMMERMAN, Attorney General; and HON. RICHARD THORNBURGH, Governor,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals properly concluded that the federal Surface Transportation Assistance Act of 1982, 49 U.S.C. § 2301 et. seq., did not preempt states from regulating the overall length of tractor-trailer combination vehicles when travelling on roads which are not a part of the federal Designated Network? [1]

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[1] The Designated Network refers to the system of primary highways designated by the United States Department of Transportation under 49 U.S.C. § 2311, including reasonable access to other roads for specified purposes such as food, fuel, rest, repair and terminals. See 49 U.S.C. § 2312.

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PARTIES

All parties appear on the caption of the petition for writ of certiorari.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1-19) is published at 760 F.2d 499. The opinion of the District Court (Pet. App. 20-36) is published at 583 F.Supp. 1461.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1985, and the petition was filed within 90 days. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are Sections 411-412 of the Surface Transportation Assistance Act of 1982, as amended by the Tandem Truck Safety Act of 1984, Title 49, §§ 2311-2312, as amended, and Pennsylvania Consolidated Statutes Annotated, Title 75, §§ 102, 4904, 4908, 4921 and 4923. Both the federal and state statutory provisions appear as an addendum to this brief in opposition at pages Add. 7-19.

STATEMENT

Prior to December of 1982, the federal government had no standards on vehicle lengths. However, Pennsylvania, like most other states, imposed an overall length limit of sixty feet on tractor-semi-trailer combinations. 75 Pa. Cons. Stat. Ann. § 4923(a) (Purdons Supp. 1983-84).[2] Although Pennsylvania attempted to regulate trailer and tractor length through its overall length provision, trucking companies, such as petitioners here, were able to increase their loading capacities and still meet the overall length limit by reducing the length of their tractors and correspondingly increasing the length of their trailers. Thus,

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[2]Pennsylvania did not allow twin-trailers on its highways in 1982.

petitioners operated fifty-three foot trailers in Pennsylvania in combination with a short tractor that added only seven feet to the overall length. Pet. App. 3.

In late 1982, Congress ventured into the area of highway regulation by enacting the Surface Transportation Assistance Act of 1982 (STAA). 49 U.S.C. §§ 2301-2315. That law addressed and, to some extent, preempted state size, weight and vehicle configuration limits for large commercial motor vehicles. It directed that no state may prohibit the operation of a tractor and two trailing units (twin-trailers) on the Designated Network. 49 U.S.C. § 2311(c). It also directed that no state shall impose a vehicle length

limitation of less than forty-eight (48) feet for a semi-trailer unit operating in a truck tractor-semi-trailer combination or twenty-eight (28) feet on the length of a twin-trailer unit combination "on any segment of the Designated Network". 49 U.S.C. § 2311(a). Subsection (b) of Section 411, 49 U.S.C. § 2311(b), further provided that any length limitations established by the states under subsection (a) were to apply "solely to the semi-trailer or trailers and not to the truck tractor". Finally, Subsection (b) provided that no state shall establish any regulation "which has the effect of prohibiting the use of trailers or semi-trailers of such dimensions as those that were in actual and lawful use in such state on December 1, 1982."

As a result of the STAA, Pennsylvania was required to amend its state legislation and it did so. See 1983 Pa.Legis.Serv. 93 (Purdons)(Act No. 1983-19) at Add. 14. First, Pennsylvania's prohibition against the operation of twin-trailers on the Designated Network was eliminated. See Act 19, § 3, amending 75 Pa. Cons. Stat. Ann. § 4904(e), Add. 14. Second, the pre-existing sixty foot length limitation was abolished for both semi and twin combination vehicles when operating on the Designated Network (so long as the length of the semi-trailer did not exceed forty-eight (48) feet and the length of each twin-trailer did not exceed twenty-eight (28) feet.) See Id; Section 4923(b), Add. 19. In other words, so long as the semi-trailer unit

did not exceed forty-eight (48) feet in length, there was no limit on its overall length when operating on the Designated Network. However, on roads which are not part of the Designated Network, Pennsylvania's sixty (60) foot overall length limitation remained.[3]

Thus, the two issues before the District Court were whether petitioners could operate their fifty-three (53) foot trailers without regard to overall length on (1) the Designated Network and

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[3]It should be noted that Pennsylvania law did not prohibit petitioners from operating their 53 foot trailers either (1) on the Designated Network or (2) off the Designated Network. However, because petitioners' trailers are in excess of forty-eight (48) feet (the length limitation established in Subsection (a) of § 411) the overall length of the vehicle could not exceed sixty (60) feet.

(2) all roads in Pennsylvania. And, because the District Court concluded that they could be operated on all Pennsylvania roads, it concluded, a fortiori, that their operation was authorized on the Designated Network. Pet. App. 28-35.

Following the District Court's decision, but prior to the decision of the Court of Appeals, two significant events occurred. First, the Federal Highway Administration (FHWA), the agency charged with administration of the STAA, published a "final rule" on June 5, 1984 at 49 Fed.Reg. 23302-23329. In that final rule, FHWA issued an interpretation concluding that the STAA's length provisions applied only when the combination vehicles were in use on the national Network or in transit between the Network and terminals

or other service locations; the precise position taken by Pennsylvania in its 1983 legislation. 49 Fed.Reg. at 23317.

Then, on October 30, 1984, Congress passed the Tandem Truck Safety Act, P.L. 98-554, Title I, 98 Stat. 2829, which amended both Sections 411 and 412 of the STAA. The 1984 amendments, inter alia, (1) authorized the governors of the various states to exempt certain interstate highways from the Designated Network, 49 U.S.C. § 2311(i), (2) provided that, on the Designated Network, no state shall prohibit vehicle widths of less than 102 inches, and (3) provided that the STAA should not be construed as preventing states from imposing reasonable safety restrictions on the operation of 102 inch wide combination vehicles which exceed 28-1/2 feet in length. Add. 7-13.

On April 23, 1985, the Court of Appeals issued its opinion and order which affirmed the District Court with regard to the Designated Network question.[4] However, it reversed the District Court with regard to other roads concluding that the STAA did not (and was not intended to) preclude states from regulating the overall length of combination vehicles when operating on roads which were not a part of the Designated Network; this being the same interpretation as that of FHWA.

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[4]Respondents have not filed a cross-appeal from this portion of the Court of Appeals' decision.

ARGUMENT

The decision of the Court of Appeals is not in conflict with the decision of any other court of appeals or any state court of last resort. Nevertheless, petitioners ask this Court to review this case because (1) it will eliminate confusion among the states, (2) it will determine what equipment the trucking industry should buy, and (3) it should determine congressional policy. See petition at 7. However, none of the reasons set forth above is persuasive. First, the Federal Highway Administration has already eliminated any confusion among the states by issuing its final rule on June 5, 1984 which interprets the STAA precisely as did the Court of Appeals. Second, the only confusion regarding the purchase of equipment stems from petitioners' refusal

to accept the language of the STAA, FHWA's interpretation of the STAA and the Court of Appeal's ascertainment of congressional intent. Finally, although the record does not show that the issue before this Court is of sufficient importance to warrant review, assuming arguendo that it is, the Court of Appeals did properly determine Congress' intent and that determination was logical.

1. Petitioners' contention that this court should review the case to determine what conforming laws the 50 states must enact is without merit. As noted earlier, although no other court of appeals has ruled on the issue presently before this Court, FHWA has published a "final rule" which provides clear guidance to all states:

> Section 658.13 Length.
> (a) The length provisions of the STAA apply only to the following types of vehicle combinations: (1) Truck-tractor-semi-trailer (2) Truck tractor-semi-trailer-trailer.
>
> The length provisions apply only when these combinations are in use on the National Network or in transit between these highways and terminals or service locations pursuant to § 658.19.

49 Fed.Reg. at 23317[5]. That "final rule" goes on to reason: "Congress established truck lengths (sic) limits in the STAA in order to open up a National Network for travel by larger trucks", 49 Fed. Reg. at 23310

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[5]FHWA's final rule is now codified at 23 C.F.R. §§ 658.1-658-21.

and "the STAA mandates that the full Interstate Systems be available for the operation of commercial vehicles of the dimensions authorized." Ibid, at 23304 (emphasis added).

Although the Court of Appeals concluded that it was not bound by this interpretation of FHWA because the issue before the Court was "a matter of pure statutory construction", Pet. App. 13, nevertheless, given FHWA's interpretation and the Court of Appeals adoption of that interpretation, respondents are hard-pressed to understand what further guidance is needed. Moreover, respondents submit that the Court of Appeals erred in not giving deference to FHWA's interpretation. In Chevron U.S.A. v. National Resources Defense Council, No. 82-1005, filed June 25, 1984, this Court

noted that a distinction exists between (1) an agency interpretation which construes a statute in a manner in conflict with clear Congressional intent and (2) an agency interpretation of a statute which is silent or ambiguous as to important details of enforcement. Although respondents believe that the STAA is rather clear in its application to only the Designated Network, assuming arguendo that the statute is ambiguous, so long as "the agency's answer is based on a permissible construction of the statute", courts will give that construction deference. Ibid., Slip Op. at 4-5.[6] A review of the rationale of

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[6]Even the District Court, which ruled against respondents on both issues, conceded that it was "difficult to fully determine the underlying policy implications of the STAA" and the STAA's legislative history provided "little guidance". Pet. App. 31-32.

the Court of Appeals confirms that FHWA's interpretation not only was permissible, it was correct.[7]

2. Second, although petitioners suggest that confusion exists regarding the type of equipment which carriers should purchase, the only parties apparently confused are the

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[7]Although petitioners argue that FHWA's interpretation does not comport with the language of the STAA (petition at 11), subsequent events indicate otherwise. As noted earlier, five and one-half months subsequent to FHWA's publication of its interpretation in the Federal Register, Congress enacted the Tandem Truck Safety Act of 1984, and in doing so, amended Sections 411 and 412 of the STAA in such a manner as to

(Footnote continued on next page)

carrier petitioners, National Freight, Inc. and Dart Transit Co. The other petitioners are manufacturers.

Footnote continued

actually provide for the elimination of certain interstate roads from the designated Network. Furthermore, as Senate Report No. 98-505 illustrates, Congress was fully aware of FHWA's involvement in the 1982 legislation, and was fully aware of FHWA's responses to that legislation. See Senate Report No. 505, 98th Cong. 2d Sess., reprinted in 1984 U.S. Code Cong. & Ad. News 4769, 4772-4776; see also H.Rep. No. 926, 98th Cong. 2d Sess. (submitted August 1, 1984). A copy of excerpts from the Senate Report appears in the Addendum at pp. 1-6. Thus, not only do the congressional reports and the 1984 legislation confirm that Congress's concern was limited to the operation of large combination vehicles on the Designated Network, it further confirms that Congress, with full knowledge of FHWA's involvement and responses to the 1982 legislation, chose not to amend or modify Section 411 to read as petitioners would like it to read. When Congress re-enacts provisions of law with presumed knowledge of administrative interpretations thereof, Congress is treated as having adopted those interpretations, and courts are bound thereby. See United States v. Sheffield Board of Commissioners, 435 U.S. 110, 134 (1977). Pet. App. 37-38.

Again, the gravamen of petitioners' concern is allegedly the state's inability "to get clear guidance on the application of the STAA's [no overall length] clause". Petition at 10. This statement is simply untrue. As noted above, FHWA has issued clear, unequivocal guidance on the question and Congress has not disturbed this guidance. What is true is that petitioners are simply unhappy with the guidance which has been forthcoming, first from FHWA, then from the Third Circuit Court of Appeals, and finally from the Tandem Truck Safety Act of 1984. This is not a case in which a court has issued a decision in conflict with an administrative agency's interpretation. Admittedly, a stronger argument can be made that this

Court should grant review to resolve an inconsistency between an agency's and court's interpretation. See, e.g., Federal Open Market Comm., etc. v, Merrill, 443 U.S. 340 (1979). No such inconsistency exists in this case.

3. Finally, petitioners argue that this Court should review the case to determine congressional policy. However, it is difficult to understand why this Court's determination is necessary when, as noted, the administrative agency, the Third Circuit and Pennsylvania have each independently addressed that issue and reached the same result. It is also difficult to understand why petitioners' case presents an issue of sufficient national importance to merit this Court's review. However, even assuming arguendo that petitioners

have otherwise stated an issue of sufficient national importance, an analysis of the STAA confirms that the Court of Appeals was correct in its holding.

Without expressly stating it, petitioners are asking this Court to hold that, in enacting the STAA, Congress intended to prohibit states from imposing any overall length limitations on any public roadway. Clearly, this was not the intent of Congress, and the Court of Appeals properly so noted: "it is difficult to believe that Congress desired to preempt state vehicle length laws as to every street, road, and alleyway in a state, thus potentially subjecting narrow streets in densely populated areas and narrow country roads

to tractor trailers seventy (70) feet or more in length." Pet. App. 17.[8]

One of the main purposes of the STAA was the enhancement of interstate commerce, see H.Rep. No. 555, 97th Cong. 2d Sess. 23, reprinted in 1982, U.S.

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[8]In oral argument before the Court of Appeals, counsel for petitioners admitted that a tractor "can run up to as much as twenty feet." Thus, if petitioners' interpretation were accepted, the STAA would prohibit states from regulating the operation of seventy-three (73) foot semi-trailer combinations (53 feet plus 20 feet) regardless of the type of road. Not only is this position wanting for logic, it becomes further illogical in view of this Court's prior conclusion that 55 foot semi-trailer combinations are susceptible "to dangerous off-tracking". See Kassell v. Consolidated Freightways Corp., 450 U.S. 662, 672 (1980). Thus, it would be patently illogical to conclude that Congress intended to preempt the states by authorizing the use of 73 foot semis on all public roads.

Code Cong. & Ad. News 3629, 3661, and this purpose was clearly and logically accomplished by permitting the operation of 48 foot semi-trailers and 28 foot twin-trailers on any segment of the national Designated Network without regard to overall length.[9] In addition, the STAA requires that no state shall

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[9]Indeed, when the STAA was amended in 1984 by the Tandem Truck Safety Act, the Senate Report from the Committee on Commerce, Science and Transportation reiterated: "the Surface Transportation Assistance Act of 1982 (STAA) established uniform truck length requirements for trucks traveling on the national system of interstate and defense highways and certain segments of the federal aid primary system highways, as designated by the Secretary of Transportation... Section 411 of the STAA sets minimum nationwide truck length limits of 48 feet for the semitrailer unit of a truck-tractor-semi-trailer combination and 28 feet for the trailer or semi-trailer operating in a truck

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deny these vehicles access from the Designated Network to facilities for food, fuel, repair, rest and terminals. 49 U.S.C. § 2312. Under the Court of Appeal's decision, petitioners are not precluded from using their 53 foot

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Footnote continued

tractor-semi-trailer-trailer combination. These limits...apply to vehicles operating on the national system of interstate and defense highways and qualifying federal aid primary system highways designated by the Secretary of Transportation...The STAA mandates that tandem trailer trucks and the other longer, wider trucks authorized under that act be permitted on all interstate highways." 1984, U.S. Code Cong. & Ad. News at 4769, 4770, 4771 (emphasis added).

Clearly the STAA of 1982, as amended by the Tandem Truck Safety Act of 1984, did not (and does not) preclude states from regulating overall length limits on roads which are not part of the Designated Network.

trailers in Pennsylvania. They are not precluded from using these trailers in combination with a tractor of unlimited length on the Designated Network.[10] These trailers can travel from the Designated Network to terminals, including those which are not their own, again without regard to overall length.[11] Finally, petitioners may operate their 53 foot trailers on any Pennsylvania road for local delivery and pick-up so long as they stay within Pennsylvania's 60 foot overall length limitation.

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[10]As noted earlier, this is the issue which Pennsylvania chose not to appeal to this Court.

[11]Under Pennsylvania law, a terminal is defined as "a facility, to or from which a combination is actually

(Footnote continue on next page)

Thus, Pennsylvania's requirement that petitioners accomplish their local deliveries with combination vehicles which do not exceed 60 feet in length is no more of a burden than that which the STAA has placed upon twin-trailer carriers, who, upon arrival at a terminal, are required to "break" their combination for local delivery. In fact, the burden to petitioners may be less. See

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Footnote continued

en route for loading, unloading, breaking down or storing, which has adequate off-highway parking, maneuvering and vehicle storage area to which vehicles can obtain access and egress without backing from or onto a highway, street or public alley." 75 Pa. Cons. Stat. Ann. § 102 (Purdons 1983). And, it should be noted that petitioner National Freight, Inc., does have four terminal facilities in Pennsylvania whereby it could drop its 53 foot containers and then accomplish local delivery by either "breaking" the loaded trailer or connecting it to a shorter tractor. Pet. App. 37.

Section 2312(b).[12]

Contrary to petitioners' assertion, the decision of the Court of Appeals does not violate any safety consideration which Congress had in mind. Petitioners' sole basis for its interpretation of the STAA is a single sentence in Section 411 which prohibits the states from imposing overall length limitations, petition at 2. As the

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[12]Although petitioners speak of the economic burden allegedly imposed on them by reason of Pennsylvania laws, petition at 9 n.8, the question before this Court does not involve the commerce clause and that clause's balancing test. Rather, Congress having affirmatively addressed the question of vehicle length, the sole question before this Court is whether Pennsylvania's law conflicts with federal law and thus violates the Supremacy Clause. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 154-55 (1982).

Court of Appeals logically concluded, however, this prohibition was obviously limited to operations on the Designated Network, and Congress did not intend to "completely deprive the states of the power to regulate vehicle lengths, even as to roads off the National Network". Pet. App. 17.

Nor does the decision of the Court of Appeals force petitioners to operate short tractors everywhere (see petition at 9). If petitioners are going to use short tractors everywhere, it is because of two factors: first, their desire to make as much profit as possible by squeezing the length of their cabs and extending the length of their trailers in the first place, and second, their refusal to operate their local delivery business as they apparently did with success for years prior

to the STAA; i.e., within a 60 foot overall length limit.[13]

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[13]Petitioners make much of the fact that the STAA was intended to eliminate state cab length restrictions for combination vehicles regardless of the road upon which they are operating (petition at 7). However, the inconsistency of petitioners' argument is apparent from the very language of the STAA. Indeed, the STAA only prohibits the states from regulating cab length when the combination is operated on the Designated Network. See Section 411(b). Thus, Pennsylvania could pass a law tomorrow which limits a cab's length to seven (7) feet when operating off of the Designated Network without violating the STAA. Clearly, to the extent Congress was concerned with cab length, that concern related to long-haul, over-the-road travel, and not short, local delivery service. Proof of this appears in the title to Section 411 - "Length Limitations on Federally Assisted Highways".

CONCLUSION

For the foregoing reasons, the writ should not be granted.

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A D D E N D U M

EXCERPTS FROM SENATE REPORT NO. 98-505

DATED JUNE 6, 1984, ON THE TANDEM TRUCK SAFETY ACT OF 1984 FROM THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION (TO ACCOMPANY S. 2829)

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2217) entitled the "Tandem Truck Safety Act of 1984", having considered the same, reports favorably thereof with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

The Surface Transportation Assistance Act of 1982 (STAA) established uniform truck length requirements for trucks travelling on the National System of Interstate and Defense Highways and certain segments of the Federal-aid Primary System highways, as designated by the Secretary of Transportation. A comparable nationwide width standard of 102 inches was established as part of the fiscal year 1983 Department of Transportation (DOT) appropriations act (Public Law 97-369) and was amended early in 1983 (Public Law 98-17) to make the effective dates of the length and width provisions coincide on April 6, 1983.

Trucking companies point to important productivity gains which will result from the new uniform limits, once in

place nationwide. Many also believe that safety is enhanced due to the need for fewer trucks on the road, given the increased cargo capacity of the larger trucks, and the improved maneuverability of tandem trucks compared to single trailers.

Officials in some urban areas, however, are concerned that the longer trucks, tandem units, and the 102-inch wide trucks may constitute a safety hazard on older urban Interstate highways which do not meet current construction specifications. These highways, therefore, are considered by these officials to be unable to accommodate the larger trucks.

This legislation amends the STAA to ensure establishment of a nationwide route system for the larger trucks which can safely accommodate these vehicles.

BACKGROUND AND NEEDS

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

Section 411 of the STAA sets minimum nationwide truck length limits of 48 feet for the semitrailer unit of a truck tractor-semi-trailer combination and 28 feet for the trailer or semitrailer operating in a truck tractor-semi-trailer-trailer combination. These limits, which are exclusive of safety and energy conservation devices, apply to vehicles operating on the National System of Interstate and Defense Highways and qualifying Federal-aid Primary System highways designated by the Secretary of Transportation. The STAA precludes States from prohibiting the operation of "double" (i.e., a truck trailer and two trailing units) on any segment of highway which the Secretary has designated for their use.

Section 411 required the Secretary to make an initial determination of highways to be designated for the use of the longer trucks and doubles by April 6, 1983, and a final designation by October 6, 1983. In addition to opening all Interstate highways to the larger trucks, this section required the Secretary to designate as qualifying Federal-aid Primary System highways those such highways that are capable of safely accommodating the longer trucks and doubles.

* * * *

Interstate system characteristics

The STAA mandates that tandem trailer trucks and the other longer, wider trucks authorized under that act be permitted on all interstate highways. Some State officials, however, are concerned that some segments of interstate highways cannot safely accommodate these larger motor vehicles. Certain routes which are part of the interstate system were not built according to currently accepted interstate standards; under current federal law, a State may designate certain roads as interstate routes although the roads were not built with interstate funds.

* * * *

Reasonable access

The STAA requires that States not deny reasonable access between the national highway network and terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers. The Secretary has allowed the State to establish individual provisions for access to the national network, rather than establish a Federal definition of reasonable access. Trucking industry representatives testified before the Surface Transportation Subcommittee that this nonuniformity of access has become a considerable burden for trucking companies. As of September 1983, 18 States

allow unlimited access, some permit very little deviation from the national network, and 13 States have no policy at all.

An additional concern is that the STAA is unclear as to whether trucking companies may use single 28-foot by 102-inch trailers in local pickup and delivery service. Trucking companies attempt where possible to use the same equipment for local service and over-the-road operations in order to avoid rehandling of freight at carrier's terminal facilities. For example, Roadway Express testified that it currently uses standard 45-foot by 96-inch semitrailers for roughly 75 percent of its local pickup and delivery operations. Roadway, as well as other motor carriers, wants to take advantage of the STAA provisions allowing nationwide use of the longer, wider trucks and tandem trailer units on designated routes. With the introduction of tandem trailer units into its fleet, Roadway therefore envisions using the single 28-foot trailer as a local pickup and delivery vehicle, replacing the 45-foot trailer for this purpose. The trucking industry maintains that both safety and productivity will be enhanced if the 28-foot by 102-inch single trailers are authorized for use in local pickup and delivery operations, through clarification of the STAA provisions.

DOT route designations

On February 3, 1983, DOT's Federal Highway Administration (FHWA) published a Notice of Policy Statement regarding the nationwide truck size and weight standards. FHWA defined "qualifying" highways, for use by both longer and wider trucks, as:

-the interstate system;

-those sections of the Federal-aid primary system which are divided highways with four or more lanes and full control of access--except where the State can justify that such use is not in the public interest (e.g., parkways or other routes where truck traffic is currently prohibited); and

-other Federal-aid primary system highways designated by a State that comply with safety and operational requirements, such as traffic lanes designated to be at least 12 feet wide.

DOT noted in this policy statement that the intent of this legislation was to "provide for the needs of interstate commerce by granting appropriate access to highways built with Federal-aid financial assistance without compromising the safety of the traveling public and the structural integrity of the highway system." (Federal Register, February 3, 1983, p. 5211). In adopting this policy, FHWA said it "has attempted to interpret the intent of the Congress to accommodate the needs of the Nation for a safe, efficient, and economical highway transportation system." (Federal Register, February 3, 1983, p. 5212).

* * * *

SUBCHAPTER II - LENGTH AND WIDTH LIMITATIONS § 2311. Length limitations on federally assisted highways

(a) Prohibition against certain limitations on semitrailers and trailers

Except as provided in subsection (i) of this section, no State shall establish, maintain, or enforce any regulation of commerce which imposes a vehicle length limitation of less than forty-eight feet on the length of the semitrailer unit operating in a truck tractor-semitrailer combination, and of less than twenty-eight feet on the length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the National System of Interstate and Defense Highway (other than a segment exempted under subsection (i) of this section) and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary of Transportation (hereinafter in this part referred to as the "Secretary"), pursuant to subsection (e) of this section.

(b) Nonapplicability of limitations to truck tractors; prohibition against overall length limitations on truck-tractor semitrailer or truck-tractor semitrailers, trailer combinations; prohibition against regulation of commerce prohibiting use of certain trailers and semitrailers.

Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semitrailer-trailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

(c) Prohibition by State of combination of truck tractor and two trailing units forbidden.

No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways (other than a segment exempted under subsection

(i) of this section), and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

(d) Establishment of rules and making of determinations by Secretary

The Secretary is authorized to establish rules to implement the provisions of this section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) subject to subsections (a) and (b) of this section.

(e) Designation of qualifying Federal-aid Primary System highways; time; enactment of final rules

(1) The Secretary shall designate as qualifying Federal-aid Primary System highways subject to the provisions of subsections (a) and (c) of this section those Primary System highways that are capable of safely accomodating the vehicle lengths set forth therein.

(2) The Secretary shall make an initial determination of which classes of highways shall be designated pursuant to paragraph (1) within 90 days of January 6, 1983.

(3) The Secretary shall enact final rules pursuant to paragraph (1) no later

than two hundred and seventy days from January 6 1983, and may revise such rules from time to time thereafter.

(f) Truck tractor defined

For the purposes of this section, "truck tractor" shall be defined as the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(g) Effective date

The provisions of this section shall take effect ninety days after January 6, 1983.

(h) Exclusion of safety and energy conservation devices

The length limitations described in this section shall be exclusive of safety and energy conservation devices, such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mud-flaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors and other devices, which the Secretary may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded under this subsection from the limitations of this section shall have by its design or use the capability to carry cargo.

(i) Exemption from length requirements

(1) If the Governor of a State, after making the consultations specified in paragraph (2) of this subsection, determines that any specific segment of the National System of Interstate and Defense Highways is not capable of safely accommodating motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section, the Governor may notify the Secretary of such determination and request that the Secretary exempt such segment from one or both of such subsections.

(2) Before making such notification, the Governor shall consult with units of local government within the State in which the specific segment of such System is located, as well as the Governor of any State adjacent to that State that might be directly affected by such exemption. As part of such consultations, consideration shall be given to any potential alternative route that--

(A) can safely accommodate motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section; and

(B) serves the area in which such segment is located.

(3) The Governor shall transmit with such notification specific evidence of safety problems that supports such determination and the results of consultation regarding any alternative route under paragraph (2) of this subsection.

(4)(A) If the Secretary determines, upon request by a Governor under paragraph (1) of this subsection or on the Secretary's own initiative, that any segment of the National System of Interstate and Defense Highways is not capable of safely accommodating motor vehicles having the lengths set forth in subsection (a) of this section or motor vehicle combinations described in subsection (c) of this section, the Secretary shall exempt such segment from one or both of such subsections. Before making such determination, the Secretary shall consider any possible alternative route that serves the area in which such segment is located.

(B) The Secretary shall make such determination within a period of 120 days after the date of receipt of notification from a Governor under paragraph (1) of this subsection or the date on which the Secretary initiates action under this paragraph, as the case may be, with respect to such segment. If the Secretary determines that such determination will not be made within such time period, the Secretary shall immediately notify the Congress and shall furnish the reasons for the delay, information regarding the resources assigned, and the projected completion date, for any such determination.

(C) The Secretary shall make such determination only after affording interested parties notice and the opportunity for comment. Any exemption granted by the Secretary under this paragraph before the date on which final rules are issued under subsection (a) of this section shall be included as part of such final rules. Any such exemption granted on or after such date shall be published as a revision of such rules.

§ 2312. Access to the Interstate System

(a) No State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this chapter between (1) the Interstate and Defense Highway System (other than any segment thereof which is exempted under section 2311(i) or 2316(e) of this title) and any other qualifying Federal-aid Primary System highways, as designated by the Secretary and (2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers and for any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 1/2 feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

(b) Nothing in this section shall be construed as preventing any State or local government from imposing any reasonable restriction, based on safety considerations, on any truck tractor-semitrailer combination in which

the semitrailer has a length not to exceed 28 1/2 feet and which generally operates as part of a vehicle combination described in section 2311(c) of this title.

PENNSYLVANIA VEHICLE CODE

Sections 102, 4904(e), 4908, 4921(a), 4923(a), Title 49, Pa.Cons.Stat.Ann.

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Terminal." A facility, to or from which a combination is actually en route for loading, unloading, breaking down or storing, which has adequate off-highway parking, maneuvering and vehicle storage area to which vehicles can obtain access and egress without backing from or onto a highway, street or public alley.

§ 4904. Limits on number of towed vehicles.

* * *

(e) Two-trailer combinations on interstate and designated primary highways.--Combinations consisting of a truck tractor and two trailers may only be driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways).

§ 4908. Operation of certain combinations on interstate and certain primary highways.

(a) General rule.--Combinations authorized by section 4904(e) (relating to limits on number of towed vehicles) to have two trailers, or by section 4923(b)(6) (relating to length of vehicles) to exceed the length limitations for combinations, may be driven only on the types of highways and under the limitations set forth below:

(1) On a designated network consisting of all interstate highways and portions of Federal aid primary highways having at least a 48-foot-wide roadway or two 24-foot-wide roadways and designated by the department as capable of safely accomodating such vehicles.

(2) Between the designated network and either of the following:

(i) A terminal or a facility for food, fuel, repair or rest having an entrance within two-tenths of a mile of the nearest ramp or intersection, but only on highways having

lanes at least 12 feet wide and only if the facility meets the criteria for off-street parking, maneuvering and vehicle storage area for terminals.

(ii) A terminal which can safety and reasonably be accessed using highways approved under subsection (d).

(b) Household goods carriers.--In addition to the operations authorized in subsection (a), a household goods carrier, consisting of a truck tractor and either of the following:

(1) A single trailer, which exceeds the maximum length for combinations established in section 4923(a), may be driven between the designated network and a point of loading or unloading which can safely and reasonably be accessed.

(2) Two trailers may be driven between the designated network and a point of loading or unloading which can safely and reasonably be accessed using highways approved under subsection (d) for the particular movement.

(c) Nearby terminals and facilities. --Where one or more terminals or facilities for food, fuel, repair or rest along a highway having lanes at least 12 feet wide are in close proximity to a terminal or facility which is within two-tenths of a mile of the designated network, all of such terminals and facilities shall be deemed to be within two-tenths of a mile of the designated network.

(d) Route approval.--Approval of a route under subsection (a)(2)(ii) or (b)(2) shall be obtained from the:

(1) City in the case of any highway in a city.

(2) Department in the case of a State highway not in a city, except that the department will, upon request, delegate authority to approve routes under this subsection to a municipality which has been delegated authority to issue permits in accordance with section 420 of the act of June 1, 1945 (P.L. 1242, No. 428), known as the State Highway Law.

(3) Municipality in the case of a local highway not in a city.

(e) Notice.--

(1) The department shall publish the designated network established in subsection (a)(1) in the Pennsylvania Bulletin as a notice under 45 Pa.C.S. § 725(a)(3) (relating to additional contents of Pennsylvania Bulletin) and will also forward the designated network to trucking companies and associations and other interested parties, upon request.

(2) Approval of a route under subsection (a)(2)(ii) shall be effective upon notice by the approving authority to the person who requested it. Notice of the approval shall also be given to State and affected local police and shall be published in the Pennsylvania Bulletin within ten days as a notice under 45 Pa.C.S. § 725(a)(3).

(3) Approval of a route under subsection (b)(2) shall be effective upon notice by the approving authority to the person who requested it. Notice of the approval shall also be given to State and affected local police and shall be published in the Pennsylvania Bulletin within ten days.

(f) Revocation of route approval.--The authority which approved a route under subsection (a)(2)(ii) may revoke the route approval if it determines that the route or some portion of it cannot safely and reasonably accommodate combinations authorized to exceed length or number of trailer limitations. Notice of the revocation shall be published in the Pennsylvania Bulletin as a notice under 45 Pa.C.S. § 725(a)(3) and shall be effective 15 days after such publication, except that the posting authority may effect an earlier revocation by posting signs to indicate the revocation. Written notice of the revocation shall also be given to the person who requested the route approval and to State and affected local police.

§ 4921. Width of vehicles.

(a) General rule.--The total outside with of a vehicle, including any load, shall not exceed eight feet except as otherwise provided in this section. While operating as provided in section 4908 (relating to operation of certain combinations on interstate and certain

primary highways), the total width of a vehicle shall not exceed eight and one-half feet, except as otherwise provided in this section.

§ 4923. Length of vehicles.

(a) General rule.--Except as provided in subsection (b) no motor vehicle, including any load and bumpers, shall exceed an overall length of 40 feet, and no combination, including any load and bumpers, shall exceed an overall length of 60 feet.

(b) Exceptions.--The limitations of (a) do not apply to the following:

* * *

(6) Any combination consisting of a truck tractor and one or two trailers, when driven as described in section 4908 (relating to operation of certain combinations on interstate and certain primary highways), provided that, except when being operated as a part of a combination of a tractor and single trailer not exceeding an overall length of 60 feet, the length of a single trailer shall not exceed 48 feet and the length of each double trailer shall not exceed 28 feet.